



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Continental Lumber Co., Inc.

**File:** B-258330

**Date:** January 9, 1995

Conrad Rupert for the protester.  
Rhea Daniels Moore, Esq., Lori Polin Jones, Esq., and  
Laurie Ann Ristino, Esq., Department of Agriculture, for the  
agency.  
Christine F. Davis, Esq., and James A. Spangenberg, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

### DIGEST

1. The Forest Service properly may require timber purchasers to reconstruct forest development roads to a higher standard than that needed in the harvesting and removal of timber in a particular sale where the higher standard reasonably reflects the agency's needs.
2. Because, in accordance with 16 U.S.C. § 472a (1988), the Forest Service must ensure that timber is sold at not less than its appraised value, the agency reasonably limited the amount of road reconstruction credit available to timber purchasers to the appropriate estimated costs of reconstructing those roads necessary to haul timber to the designated marketing point used to appraise the value of the timber.

### DECISION

Continental Lumber Co., Inc. protests the terms of the Smith Timber Sale prospectus, issued by the Department of Agriculture, Forest Service, for the sale of timber in the Black Hills National Forest. The prospectus requires purchasers to perform specified road reconstruction work before hauling timber from the sale area. Continental claims that the road reconstruction requirements lack a reasonable basis and afford certain bidders an unfair competitive advantage.

We deny the protest.

The Forest Service sells timber from national forest lands under the authority of 16 U.S.C. § 472a(a) (1988), which precludes the sale of timber at less than its appraised value. Under 16 U.S.C. § 472a(e), the Forest Service must select a bidding method which, among other things, achieves fair and open competition and insures that the United States receives not less than the appraised value of the timber to be sold.

Pursuant to 16 U.S.C. § 535, the Forest Service is authorized to arrange for the acquisition, construction, and maintenance of forest development roads through requirements imposed upon timber purchasers, with the following proviso:

"[t]hat where roads of a higher standard than that needed in the harvesting and removal of the timber and other products covered by the particular sale are to be constructed, the purchaser of the national forest timber and other products shall not be required to bear that part of the costs necessary to meet such higher standard."  
16 U.S.C. § 535.

The Forest Service is also authorized to use appropriated funds to finance the extra work associated with building roads to higher design standards. Id.

The Forest Service has adopted a system of "purchaser credits" as a means of reimbursing timber purchasers for building higher standard roads than necessary for a given sale. See 36 C.F.R. §§ 223.38; 223.62 (1994). Under this system, timber is appraised and offered for sale as if the necessary roads had already been constructed by an independent contractor. 36 C.F.R. § 223.62. As construction proceeds on the roads specified in the timber sale contract, the purchaser is credited for the estimated cost of this work up to the maximum amount stated in the contract, and the earned credits are applied against the charges payable by the purchaser for removing timber under the contract. Id.

As indicated above, notwithstanding the use of road credits, timber may not be sold for less than its appraised value. 16 U.S.C. § 472a; 36 C.F.R. §§ 223.61; 223.63. Pursuant to the Forest Service Manual and Sale Preparation Handbook (FSH), the Forest Service appraises the timber for a particular sale presuming that it will be shipped to a specific marketing point where the raw materials or timber products may be sold. FSH § 2409.18, Chapter 45.12. In doing so, the Forest Service is to select the marketing point which will yield the highest market value for the

timber, considering such things as the availability of suitable plants, milling facilities, and marketing outlets, as well as the amount of road reconstruction work to be financed by the government. Id.

The timber sale in this case was for an estimated 4,080 CCF (hundred cubic feet) of ponderosa pine and other conifer sawlogs in the Smith Timber Sale area of the Black Hills National Forest. The sale area encompassed 1,880 acres of land in Wyoming, near the South Dakota border. The appraised value of the timber stated in the prospectus was \$768,304, which was also the minimum acceptable bid. The timber was appraised presuming a marketing point in the Spearfish, South Dakota region, which is located northeast of the sale area. The agency selected the northeastern marketing point over certain southern and northwestern locations because it is the location of the closest sawmill and because the access road to Spearfish, Forest Development Road (FDR) 805, requires less reconstruction to be financed by the government.<sup>1</sup>

The prospectus extended a maximum of \$49,000 in purchaser credit for reconstructing certain roads necessary to haul timber from the sale area to the appraised marketing point. The \$49,000 credit limit was based upon the following estimated construction costs stated in the prospectus:

- (1) \$10,010 for preconstruction engineering services;
- (2) \$22,500 for reconstructing various "local roads" at the periphery and interior of the sale area; and
- (3) \$16,450 for reconstructing a 1-mile stretch of FDR 805, the northeastern access road to the appraised marketing point.

In developing its cost estimates, the agency adopted specific design standards for reconstructing the unsuitable portions of each road. The appraised haul route, FDR 805, is a "collector road," in that it collects traffic from the "local roads" within the sale area and connects to a main arterial road heading toward the appraised marketing point. The local roads themselves are basically dead-end roads, which allow the transport of timber from the actual harvesting point. The design standards applicable to collector roads are higher than those applicable to local roads. Specifically, collector roads are open to the public except in extreme weather conditions and are designed to accommodate both standard passenger vehicles and logging vehicles travelling at moderate speeds. In contrast, local roads contain restrictions on public use and are essentially designed to accommodate only low-volume logging traffic during good weather conditions. In this case, the collector

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<sup>1</sup>FDR 805 was thus designated as the "appraised haul route" for this sale.

road design called for 4 to 6 inches of gravel surfacing and the construction of adequate drainage structures--work which was not required for the local roads.

Regardless of who purchases the timber in this case, that contractor will need to reconstruct the local roads at the periphery and interior of the sale area and to pay the \$10,010 deposit required by the prospectus for preconstruction engineering services; the contractor will be credited up to the available limit (\$32,510) for these tasks. However, under the prospectus, a contractor could elect not to use FDR 805 as its haul route, since other collector roads exit the sale area; these roads are specified as "alternate haul routes." One of these roads (FDR 106)--the one which the protester would like to use--exits the sale area to the south and connects to United States highway 85. The prospectus designated the entire 5-mile length of FDR 106 as unsuitable for use without reconstruction and estimated that it would cost a purchaser up to \$77,000 to reconstruct the road to the collector road design standard, i.e., surfacing the road with 4 to 6 inches of gravel and constructing adequate drainage structures.

If a contractor elects to use an alternate haul route, the agency's standard timber sale contract provides that the purchaser can receive no more credit for reconstructing the alternate route than it would have received for reconstructing the appraised route. Thus, under the terms of this sale, the \$16,450 purchaser credit limit applicable to FDR 805 (the appraised haul route) applies to FDR 106 (the alternate haul route), and the protester will bear all excess costs for reconstructing the alternate route--an estimated \$60,550 (\$77,000 minus \$16,450).

Continental first protests that the Forest Service has overstated its minimum construction needs and that FDR 106 can be made suitable for use with virtually no reconstruction. Specifically, Continental argues that FDR 106 could accommodate logging traffic at the local road standard, which FDR 106 allegedly already exceeds. The protester claims that the agency may not reasonably require a timber purchaser to reconstruct the road to the higher standard necessary to accommodate collector road traffic (passenger and logging vehicles).

As stated above, the Forest Service is expressly authorized to require timber purchasers to reconstruct roads to a higher standard than that needed in the harvesting and removal of timber in a particular sale--authority which encompasses the agency's adoption of collector road design requirements. 16 U.S.C. § 535. We will not question the Forest Services's determination of the design standards applicable to a particular road unless the record clearly

shows that the determination has no reasonable basis.  
Salmon River Lumber Co., B-202933, Jan. 5, 1982, 82-1 CPD  
 ¶ 9.

In this case, a Forest Service civil engineering technician analyzed the various potential collector roads prior to bid opening to determine whether they would accommodate the intended traffic, considering that this sale will generate a high-volume of logging traffic, all of it destined for one of the collector roads, and that standard passenger vehicles will also use the collector roads to enter the forest. Given the anticipated type and volume of traffic, the Forest Service analyst determined that soil erosion would occur and water quality in nearby drainage basins would be affected, if the collector roads were not gravel-surfaced and supported with adequate drainage structures prior to hauling. This determination was based upon the fact that soil in the sale region primarily consists of inorganic silts and very fine sands--soil which would erode from the pressure of high-volume traffic unless properly protected. Based upon this analysis, the Forest Service determined that the collector roads within Smith Timber Sale area, including the appraised haul route (FDR 805) and the alternate haul route (FDR 106), would, if used for this sale, require gravel-surfacing and adequate drainage structures to accommodate the expected traffic without undue environmental damage. Continental has not shown that the Forest Service's justification lacks a reasonable basis, and from our review we have no basis to object to the application of the collector road design requirements to FDR 106. Id.

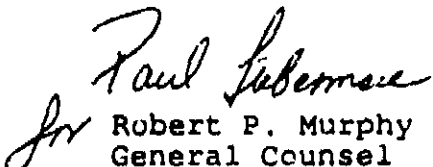
Continental also protests that it will be unfairly penalized for using the alternate southern haul route (FDR 106) because it will only receive the same purchaser credit as bidders using the appraised northeastern haul route (FDR 805). Continental argues that the Forest Service has thus afforded an improper competitive advantage to those bidders which would use the appraised haul route. Continental claims that the government should equalize the competition by extending it additional purchaser credit commensurate with the estimated costs of reconstructing the alternate southern haul route.

In this case, the Forest Service appraised the value of the timber to a marketing point accessible from FDR 805, a road requiring significantly less reconstruction than FDR 106, in the interest of limiting government road financing costs and maximizing returns from the sale. The Forest Service determined that it would cost \$49,000 to fund the road improvements allowed by 16 U.S.C. § 535 on those roads necessary to deliver timber from the sale area to the appraised marketing point. Were the agency to extend the protester additional purchaser credit beyond \$49,000 to

cover the costs of reconstructing an alternate haul route, the effect would be to permit the sale of timber at less than its appraised value in contravention of 16 U.S.C. § 472a, if the high bidder for the sale used this alternate route. See 53 Comp. Gen. 872 (1974).

In any case, agencies are not required to equalize competition to address a particular bidder's circumstances. Robert E. Russell, B-232324, Aug. 24, 1988, 88-2 CPD ¶ 178; IBI Sec. Serv., Inc., B-216799, July 25, 1985, 85-2 CPD ¶ 85. The test is whether the competitive advantage enjoyed by a bidder results from a preference or other unfair action by the government. Id. In this case, the sale prospectus extends the same amount of purchaser credit, \$49,000, to all bidders. There is no evidence that the Forest Service developed this financing limit to afford certain bidders a competitive advantage.<sup>2</sup> While Continental, which is based south of the sale area, will need to perform more road reconstruction than bidders to the north, this results from Continental's business location, not from any preference or other unfair action by the government. See Robert E. Russell, supra.

The protest is denied.

  
 Robert P. Murphy  
 General Counsel

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<sup>2</sup>Indeed, the Forest Service states that the apparent high bidder for this sale does not have a sawmill located on the appraised haul route and will probably choose one of the alternate haul routes.